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IN THE

Supreme Court of the United States

October Term, 1969.

No. 364

JOHN W. CAMPBELL,

Petitioner,

vs.

F. W. GOOCH, JR., CAPT. U. S. N., Commander, Philadelphia Naval Shipyard,

CHARLES PROUD, Civilian Employee of the Federal Government, Director of Industrial Relations, Philadelphia Naval Shipyard,

S. P. RYDER, Civilian Employee of the Federal Government, Director, Philadelphia Region U. S. Civil Service Commission,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

JOHN W. CAMPBELL,
57 Foster Avenue,
Sharon Hill, Pa. 19079,
In Propria Persona,
for the Petitioner.

Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

TO: THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, John W. Campbell, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on the 6th day of May, 1969, denying a review of an order of the United States District Court for the Eastern District of Pennsylvania, and dismissing the appeal, on the basis that the order was an interlocutory order and not a final order under 28 U. S. C. 1291.

OPINIONS BELOW.

1. Petitioner's appeal to the United States Court of Appeals for the Third Circuit was dismissed on May 6, 1968. (App. A, infra, p. 9.)

2. Petitioner's motion for a rehearing of the argument of his opposition to Appellees' motion for dismissal of Appellant's appeal was denied on May 21, 1969.

3. Judge Clary's Order of September 30, 1968, in the United States District Court for the Eastern District of Pennsylvania denying Petitioner his Constitutional rights. (App. B, infra, pp. 10-12.)

4. Petitioner's motion to vacate order of September 30, 1968, was denied without hearing on October 11, 1968.

JURISDICTION.

The judgment of the Court of Appeals for the Third Circuit was entered on May 6, 1969. (App. A, infra, p. 9.)

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Whether Judge Clary's Order of September 30, 1968, was a final order under 28 U. S. C. 1291, since it deprived Petitioner, a layman processing his own case, of free access to the workings of the United States District Court for the Eastern District of Pennsylvania without proper notice and hearing, and was violative of Article III of the United States Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, and 28 U. S. C. 1654.

STATUTES, RULES AND CONSTITUTION.

62 Stat. 929, 65 Stat. 726, 72 Stat. 348—Final decision of District Courts; Miscellaneous Court Rules for the District Court; Article III, Section 2 of the Constitution and the Fifth and Fourteenth Amendments to the Constituion; 62 Stat. 944, 63 Stat. 103—Appearance personally or by counsel; 68 Stat. 1113—Incentive Awards Act. The foregoing are set forth in Appendix C, infra, pp. 13-15.

STATEMENT OF THE CASE.

The case on appeal involves the Petitioner, John W. Campbell, a civilian Naval employee at the Philadelphia Naval Shipyard, who instituted suit in the United States District Court for the Eastern District of Pennsylvania against F. W. Gooch, Jr., Capt. U. S. N., Commander, Philadelphia Naval Shipyard, et al., in order to enforce his rights under Public Law 763, 68 Stat. 1113, Sec. 304(f) in establishing the register for Quarterman Pipefitter, P. N. S. 34(65).

The Petitioner, John W. Campbell, decided to represent himself in this action. In the process of representing himself, the Petitioner, John W. Campbell, was summoned to appear before Chief Judge Thomas J. Clary on September 26, 1968, in Civil Actions No. 42527 and No. 68-349. As a result of this hearing, the Court issued an order on September 30, 1968, that denied the Petitioner, John W. Campbell, full and complete access to the workings of the Court, made statements that were not supported by the facts and issued orders that exceeded the purpose of the hearing. Petitioner, John W. Campbell, made a motion to vacate the order entered on September 30, 1968, and the Court denied the motion without hearing on October 11, 1968. As a result, the Petitioner, John W. Campbell, appealed to the Court of Appeals. The United States Court of Appeals for the Third Circuit dismissed the appeal on the grounds that Petitioner's appeal was from an interlocutory order. The Court denied Petitioner's motion for rehearing of the argument of his opposition to Appellees' motion for dismissal of Appellant's appeal dated May 21, 1969.

REASONS FOR GRANTING THE WRIT.

The Supreme Court should consider the case because the United States Court of Appeals for the Third Circuit, in denying the appeal, acted contrary to its own previous decision, decisions of other Courts of Appeal, and precedent setting decisions of the United States Supreme Court. The actions in both lower Courts, United States Court of Appeals for the Third Circuit and United States District Court for the Eastern District of Pennsylvania, are unsupported by the facts and contain elements of a conspiracy by the Judges of both Courts and the United States Attorney to deprive Petitioner of his rights under the United States Constitution, the Fifth and Fourteenth Amendments to the Constitution, and 28 U. S. C. 1654, the right of a layman to process his own case, which goes back to the first Congress.

Petitioner showed to the Court of Appeals, in his motion against dismissal and in his memorandum in support of same, that the order being appealed denied a layman processing his own case full access to the workings of the Court, especially the Miscellaneous Court. The right to process one's own case is a fundamental right that was granted by the first Congress, September 24, 1789, Chapter 20, Sec. 35, V. 1, p. 92. The Supreme Court has held, and rightly so, that discrimination cannot be tolerated. *Brown v. Board of Education,* 347 U. S. 483.

Under Article III of the Constitution, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights, whether by unlawful action of private persons or by the exertion of unauthorized administrative power. The Court has no power to impose restrictions that would deny Petitioner this right. *Stark, et al. v. Wickard, Secretary of Agriculture, et al.,* 321 U. S. 310.

Petitioner, in his motion and memorandum, further showed the Court that in the hearing before Judge Clary on September 25, 1968, he was denied due process, in that he was summoned to appear for a hearing in Civil Actions No. 42527 and No. 68-349, but the Order of September 30, 1968, applied to all Petitioner's Civil Actions in the District Court, Civil Actions Nos. 42527, 68-349, 68-1157, 42466 and 43136. The right to a notice and a fair hearing and equal protection under the laws is a guarantee under the Fifth and Fourteenth Amendments to the Constitution. *Wong Yang Sung v. McGrath,* 339 U. S. 33; *Wheeling Steel Corp. v. Glander,* 337 U. S. 562, 571-572. Petitioner also pointed out that Judge Clary, in the course of the hearing, attempted to intimidate the Petitioner. It is well established that due process of law requires a hearing before an impartial and disinterested tribunal. A fair trial in a fair tribunal is a basic requirement of due process. *Wasson v. Trowbridge,* 382 F. 2d 807.

Petitioner also showed the Court, in his motion against dismissal and memorandum in support of same, that Judge Clary's order, wherein he called Petitioner's testimony frivolous, was not proper, since Petitioner testified that Jerome R. Richter, Assistant United States Attorney, made untrue statements to the Court in his letter of September 11, 1968. The orderly function of the process of review requires that the grounds upon which one acted be clearly disclosed and adequately sustained. *Securities and Exchange Commission v. Chenery Corp.,* 318 U. S. 80.

In the United States District Court for the Eastern District of Pennsylvania, Petitioner feels the actions of the Court contained elements of a conspiracy to deprive Petitioner of his rights under the law. Petitioner filed a motion for production of documents in Civil Action No. 68-349, and memorandum in support thereof, on September 11, 1968. According to the rules of the District Court, the motion was to

be heard before the Honorable E. Mac Troutman on September 19, 1968, at 10:00 A. M. This motion was never heard, and the United States Attorney never filed any opposition to the motion.

Petitioner feels that Judge Clary's Order of September 30, 1968, assigning all Petitioner's civil actions to Judge Masterson, was part of the conspiracy. Judge Masterson has exhibited an unwillingness to render decisions in Petitioner's civil actions. At present, Judge Masterson has a summary judgment motion in Civil Action No. 42527, which was argued on December 18, 1967, still pending; a summary judgment motion in Civil Action No. 43136, argued on May 6, 1968, still pending; a motion to vacate his order of April 2, 1968, which consolidated Civil Action No. 42527 with Civil Actions Nos. 42466, 43136 and 68-349, still pending. The assignment of all Petitioner's civil actions to Judge Masterson was the death knell for Petitioner, and was contrary to Rule 1 of the Federal Rules of Civil Procedure. ". . . They shall be construed to secure the just, speedy and inexpensive determination of every action."

In the Court of Appeals, Petitioner's motion against dismissal and memorandum in support of same showed to the Court that Judge Clary's order denied substantial rights that were not an ingredient of the cause of action and that did not require consideration with it, and cited cases that established beyond a doubt that Judge Clary's order was appealable under 28 U. S. C. 1291. *Plymouth Mutual Life Ins. Co. v. Illinois Mid-Continent Life Ins. Co. of Chicago, Ill.*, C. A. Pa. 1967, 378 F. 2d 389; *Ochsner v. Millis*, C. A. Ky. 1967, 382 F. 2d 618; *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541; *U. S. v. General Motors Corp.*, 323 U. S. 373; *Gillespie v. United States Steel*, 1964, 379 U. S. 148, 85 S. Ct. 308, 13 L. Ed. 2d 199.

Also, Petitioner points out that the United States Attorney did not support his motion for dismissal with a mem-

orandum, or cite one case in support of aforesaid motion. Furthermore, on the day of the hearing, May 5, 1969, the three judge panel did not have a copy of the order which was being appealed, and none appeared familiar with the order or the case under appeal. (Petitioner's Motion for Rehearing.)

The United States Court of Appeals for the Third Circuit has previously ignored precedent setting cases of the United States Supreme Court. *Houghton v. Scranton*, 379 F. 2d 556. This decision of the Court by Judges Kalodner, Hastie and Van Dusen was reversed by the Supreme Court on Certiorari. *Houghton v. Shafer, Governor of Penna. et al.*, 392 U. S. 639. Judges Kalodner and Van Dusen also were part of the panel which ignored precedent setting cases in Petitioner's case.

CONCLUSION.

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN W. CAMPBELL,
In Propria Persona, for the Petitioner.

July, 1969.

APPENDIX A.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 17,765.

JOHN W. CAMPBELL,

Appellant,

v.

F. W. GOOCH, JR., CAPT. U. S. N., Commander, Philadelphia Naval Shipyard,

CHARLES PROUD, Civilian Employee of the Federal Government, Director of Industrial Relations, Philadelphia Naval Shipyard,

and

S. P. RYDER, Civilian Employee of the Federal Government, Director, Philadelphia Region U. S. Civil Service Commission.

Present: McLAUGHLIN, KALODNER and VAN DUSEN, Circuit Judges.

ORDER.

(D. C. Civil No. 68-349.)

Appellant's appeal in this case is from an interlocutory order of the District Court. There is no basis for said appeal. Said appeal is dismissed.

By the Court,

McLAUGHLIN,
Circuit Judge.

Dated: May 6, 1969.

APPENDIX B.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

JOHN W. CAMPBELL
v.
J. J. STILWELL, REAR ADMIRAL U. S. N. Commander, Philadelphia Naval Shipyard.

CIVIL ACTION.
No. 42527.

JOHN W. CAMPBELL
v.
F. W. GOOCH, JR., CAPT. U. S. N. Commander, Philadelphia Naval Shipyard,
CHARLES PROUD, Civilian Employee of the Federal Government, Director of Industrial Relations, Philadelphia Naval Shipyard,
S. P. RYDER, Civilian Employee of the Federal Government, Director, Philadelphia Region U. S. Civil Service Commission.

CIVIL ACTION.
No. 68-349.

JOHN W. CAMPBELL
v.
F. W. GOOCH, JR., CAPT. U. S. N. Commander, Philadelphia Naval Shipyard.

CIVIL ACTION.
No. 68-1157.

JOHN W. CAMPBELL
v.
UNITED STATES.
CIVIL ACTION.
No. 42466.

JOHN W. CAMPBELL
v.
UNITED STATES.
CIVIL ACTION.
No. 43136.

ORDER.

AND NOW, to wit, this 30th day of September, 1968, after hearing on plaintiff's charge in the above-entitled actions that the said actions are not being processed in accordance with the Federal Rules of Civil Procedure and the Rules of this Court, and an opportunity having been given to the plaintiff in each of these actions to produce any evidence which he may have had in support of his allegations; and the hearing having developed that such charges are completely unfounded, frivolous, and are the result of complete ignorance on the part of the plaintiff of appropriate procedures, as well as his obstinate refusal to obtain counsel to process his claims, it is now ORDERED, ADJUDGED AND DECREED that the Order entered in Civil Actions Numbers 42466, 42527, 43136 and 68-349 by the Honorable Thomas A. Masterson, Judge of this Court, on April 2, 1968, consolidating the cases for purposes of hearing of motions and pre-trial discovery, is now further implemented by assigning to the said Thomas A. Masterson, Judge of this Court, for all purposes, Civil Action Number 68-1157.

Plaintiff is hereby DIRECTED AND ORDERED to file, in the future, all pleadings, motions, or any documents in the nature thereof, directly with the Clerk of the Court and not with the assigned Judge of the Court. Copies of this Order shall be served on the plaintiff, by registered mail, by the Clerk of the Court.

It is suggested to the plaintiff that he consult with and place the responsibility for the carrying forward of the above-entitled actions, with an attorney duly authorized to practice law in this Court.

BY THE COURT:

s/ THOMAS J. CLARY,
Ch. J.

APPENDIX C.

62 Stat. 929, 65 Stat. 726, 72 Stat. 348, 28 U. S. C. 1291—Final decisions of district courts, reads as follows:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

Miscellaneous Court Rules for the District Court for the Eastern District of Pennsylvania:

> "B. Miscellaneous Court.
>
> "A Miscellaneous Court will be initiated. Commencing September 11, 1967, and continuing throughout the court year, a different Judge of the District Court will be assigned to preside over Miscellaneous Court for a period of one week. The Miscellaneous Court Judge will hear and consider the following matters at the times indicated:
>
> "1. Tuesdays at 10 a.m.
>
> "Criminal calendar applications, arraignments, and miscellaneous preliminary motions relating to matters on the criminal list. Grand Jury presentments will be received at times to be fixed by the Miscellaneous Court Judge after consultation with the United States Attorney.
>
> "2. Wednesdays at 10 a.m.
>
> "Naturalization ceremonies for those weeks in which group naturalizations shall have been scheduled.
>
> "3. Wednesdays at 2 p.m.
>
> "Uncontested motions.
>
> "4. Thursdays at 10 a.m.

"Hearings on contested discovery motions filed during the preceeding* week.

"5. Fridays at 10 a.m.

"Arguments on contested non-discovery motions (excepting motions for new trial or for summary judgment) filed during the preceding* week.

"* The 'preceding week' shall include the Friday of the second week preceding, and Monday through Thursday of the week immediately preceding the week in which the contested motions are to be heard or argued, i.e., contested motions will be heard not more than two weeks, nor less than one week following the filing thereof.

"NOTE: Re Contested Motions (Items 4 and 5).

"(a) When a contested motion is filed, it must be accompanied with a short memorandum (not exceeding 2 pages) of authorities relied upon in support of the motion together with a copy of notice to opposing counsel that the matter will be brought on for hearing before the Miscellaneous Court Judge on the designated day of the succeeding week.

"(b) Opposing counsel shall file answering memoranda (not exceeding two pages) within three business days following the filing of the motion.

"(c) In addition to the foregoing, contested *discovery* motions shall be accompanied by a certification that counsel have consulted and have been unable to resolve the matter amicably.

"(d) The Miscellaneous Court Judge will hear and dispose of all contested *discovery* motions. As to all other contested motions, he will either dispose of same or, if after hearing argument he determines that the matter requires more extensive briefing and argument, he will certify the matter in writing to the Clerk of the Court for assignment to a regular Argument List of the court."

Article III, Section 2 of the Constitution:

"SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party: to controversies between two or more states, *between a state and citizens of another state,* between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, *citizens or subjects.*"

Amendment V:

"No person shall . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Section 1:

". . . nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

62 Stat. 944, 63 Stat. 103, Sec. 91, 28 U. S. C. 1654—Appearance personally or by counsel reads as follows:

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts respectively, are permitted to manage and conduct causes therein."

68 Stat. 1113, Section 304(f):

"An award under this title shall be given due weight in qualifying and selecting employees for promotion."

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 364

JOHN W. CAMPBELL, PETITIONER

v.

F. W. GOOCH, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner, an employee of the Philadelphia Naval Shipyard, instituted a series of actions in the United States District Court for the Eastern District of Pennsylvania against the United States and the Commander of the Shipyard, seeking promotion to the position of Supervisory Inspector of Shipbuilding. A district court order of April 2, 1968, consolidated four of these actions for purposes of hearing of motions and pre-trial discovery. On September 30, 1968, the district court entered a second order, assigning

"for all purposes" a fifth action to the same judge to whom the other actions had been assigned. The court of appeals dismissed petitioner's appeal from this order.

The dismissal of the appeal was correct. As the court of appeals noted, the district court's order was interlocutory. Since it was not of the class of interlocutory orders appealable under 28 U.S.C. 1292(a), and the district court did not make the certification requisite to an interlocutory appeal under 28 U.S.C. 1292(b), the court of appeals lacked jurisdiction to entertain the appeal.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1969.

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SUPREME COURT, U. S.

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI.

JOHN W. CAMPBELL,
57 Foster Avenue,
Sharon Hill, Pa. 19079.
In Propria Persona,
for the Petitioner.

Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

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S. P. RYDER, Civilian Employee of the Federal Government, Director, Philadelphia Region U. S. Civil Service Commission,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI.

Petitioner respectfully requests that this Court grant rehearing of its order dated October 13, 1969, which denied certiorari, and that the Court now grant certiorari.

REASONS FOR GRANTING THIS PETITION FOR REHEARING.

Petitioner desires to submit argument regarding intervening circumstances of substantial effect, and other substantial grounds not previously presented.

Petitioner's case raised three primary questions:

(1) Can Chief Judge Thomas J. Clary deny a layman processing his own case under 28 U. S. C. 1654 full access to the workings of the Court?

(2) Can Chief Judge Thomas J. Clary deny Petitioner his full rights under Article III of the Constitution?

(3) Can Chief Judge Thomas J. Clary deny Petitioner his full rights under the Fifth Amendment to the Constitution?

Petitioner considers these questions substantial and worthy of the Supreme Court rendering a decision on them because question (1) directly concerns approximately 118,465,000 people in the United States of voting age who someday might desire to process their own case in a court of law. Questions (2) and (3) concern 202,882,000 people who someday might seek justice in a court of law.

Due Process—Judge Clary's Interpretation. Petitioner was summoned to appear on September 26, 1968 before Judge Clary in Civil Actions Nos. 42527 and 68-349. As a result

of hearing, Judge Clary issued an order dated September 30, 1968 pertaining to Civil Actions Nos. 42527, 68-349, 68-1157, 42466 and 43136.

Due process calls for notice. *Shapiro v. Thompson,* 89 S. Ct. 1322; *Armstrong v. Manzo,* 85 S. Ct. 1187, and *Mullane v. Central Hanover Bank & Trust Co.,* 70 S. Ct. 652, 656.

Excerpt from Transcript p. 3 of proceedings before Judge Clary:

> "THE COURT: ... Mr. Campbell, do you have a lawyer?
>
> MR. CAMPBELL: No, Your Honor. I represent myself.
>
> THE COURT: All right. Let me say this to you: You have made charges of serious import against the clerk, the Court, or the operation of the Court. A New York lawyer did that not too many months ago and for the next four days he was at Holmesburg for contempt of Court.
>
> MR. CAMPBELL: Right, Your Honor.
>
> THE COURT: Now, I point that up to you, that there is one thing we do not permit, someone to attack the integrity or dignity of the Court.
>
> MR. CAMPBELL: Right, Your Honor.
>
> THE COURT: You are an intelligent person. With that warning, I am asking you now, are you prepared to proceed or do you want to consult with counsel?
>
> MR. CAMPBELL: I am prepared to proceed, Your Honor."

A fair hearing presupposes an impartial trier of the facts. *Monroe v. Pape,* 365 U. S. 167; *DeWitt v. Pail,* 366 F. 2d 682.

If the Supreme Court does not grant Petitioner Certiorari, it would be a travesty of justice if Judge Clary's interpretation of due process is permitted to set precedent.

INTERVENING CIRCUMSTANCES OF CONTROLLING EFFECT.

The Court in its October, 1969, Term has agreed to hear the following cases:

(1) A case dealing with New York cutting the welfare payments, which involves approximately 1.3 million people.

(2) A case which raises the question whether a state may deny voting rights to persons living within a Federal reservation or enclave in that state.

(3) A case which raises the question whether the state of Ohio can prevent a person from taking the bar examination because said person would not state whether or not he belonged to an organization advocating the violent overthrow of the government.

Petitioner feels that the questions presented to the Court by the above three mentioned cases are minimal in comparison to the substantial questions presented by Petitioner's case, and the possible 118,465,000 people or 202,882,000 people whose rights could be affected. The Supreme Court represents the ultimate authority within the framework of our judicial institutions, and to deny Petitioner certiorari would make a mockery of our orderly system of justice.

CONCLUSION.

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

JOHN W. CAMPBELL,
In Propria Persona,
For the Petitioner.

CERTIFICATE OF COUNSEL.

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

JOHN W. CAMPBELL.

November, 1969.